

# **EMERGENCY EXECUTIVE ORDER**

## **OF THE MAYOR OF THE CITY OF FARGO**

### **Limitation of Occupancy**

**WHEREAS**, pursuant to the authority set forth in Fargo Municipal Code §10-0318, I, Timothy J. Mahoney, M.D., Mayor of the City of Fargo, North Dakota, hereby make and declare the following factual findings and background;

**A.** On January 27, 2020 the United States Department of Health and Human Services Secretary Alex Azar declared a national public health emergency because of COVID-19;

**B.** On January 30, 2020 the World Health Organization declared the outbreak of COVID-19 as a public health emergency of international concern advising countries to prepare for the containment, detection, isolation and case management, contact tracing and prevention of onward spread of the virus;

**C.** On March 11, 2020 the World Health Organization declared COVID-19 a global Pandemic; and,

**D.** On March 13, 2020 President Donald J. Trump issued a declaration of national emergency due to the growing COVID-19 crisis in the United States; and,

**E.** On March 13, 2020 Governor Doug Burgum declared a state of emergency in the State of North Dakota in response to the public health crisis resulting from the international spread of COVID-19; and,

**F.** Pursuant to the authority of Section 10-0318 of the Fargo Municipal Code, Mayor Mahoney declared a COVID-related state of emergency in the City of Fargo on March 16, 2020, which was approved and extended by the Fargo City Commission on April 6th, 2020, “. . . until such time as the emergency conditions no longer exist or the emergency conditions no longer exist or [the emergency declaration] is otherwise terminated by the Board of City Commissioners of the City of Fargo”; and,

**G.** As of November 13, 2020, the Centers for Disease Control and Prevention report there are more than 9 million confirmed cases of COVID-19 and more than 230,000 deaths attributable to COVID-19 in the United States; and,

**H.** As of November 13, 2020, the North Dakota Department of Health reports more than 10,400 current active COVID-19 cases, 707 deaths attributable to COVID-19 and more than 59,000 total positive individuals in the State of North Dakota since the pandemic began; and,

**I.** As of November 13, 2020, hospitals are dangerously near capacity, the death rates are rising at unprecedented levels for this dangerous illness and, based upon daily testing, the percentage of positive test results, is increasing at alarming rates and all indicators show that

unless something is done to slow the spread of this very infectious and dangerous virus, the capacity of local health facilities will be overwhelmed; and,

**J.** When health facilities become overwhelmed; when resources for life-and-death health care become scarce, when healthcare providers are forced, through triage protocols, to determine which patients will receive the benefit of life-saving medical equipment and other resources, and when the COVID-19 epidemic is at such a heightened status that it becomes necessary to implement further measures in order to protect the health, safety or property of the city or its citizens from the danger for which the state of emergency was declared; and,

**K.** As a result of the establishment of the above-described COVID-related State of Emergency in the City of Fargo, the Mayor has the specified powers to prohibit or limit the movement of persons or hours of operation of businesses, by curfew or otherwise, within the City and the occupancy of premises therein; to limit or prohibit the sale, dispensing or transportation of alcoholic beverages in order to maintain the peace or to protect the health, safety or property of the city or its citizens from the danger for which said state of emergency was declared (See: Fargo Municipal Code §10-0318); and,

**L.** At this critical time, certain limited emergency measures must be established not only to reduce the opportunities for community spread, or transmission, of the extremely infectious and dangerous COVID-19 virus but also to reduce the imminent threat to public health and safety that is likely to occur if said community spread is not brought into check—if the increasing rate of prevalence of the COVID-19 virus in the population is not reduced, or “flattened”;

**NOW, THEREFORE**, based upon the foregoing premises and being duly authorized, **IT IS HEREBY DECLARED AND ORDERED:**

**1. Definitions.** – For purposes of this Executive Order, the following definitions shall apply:

- a. “Business” and “businesses” are broadly defined to include persons, partnerships, corporations, limited liability companies and any other form of business organizations that employ or engage workers including private-sector entities, public-sector entities, non-profit entities, and state, county, and local governments.
- b. “Home” and “homes” are broadly defined to include mobile homes, hotels, motels, shared rental units, shelters, and similar facilities, to the extent they are used for lodging.
- c. “Household” means a group of individuals who share the same living unit.
- d. “Occupant load” shall be as described in paragraph 4, below
- e. “Place of Public Accommodation” means a business, or an educational, refreshment, entertainment, recreation facility, or an institution of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public. Places of Public

Accommodation include, but are not limited to, the businesses identified in paragraph 3, below, of this Emergency Order.

- f. “Worker” and “workers” are broadly defined to include owners, proprietors, employees, contractors, vendors, volunteers, and interns.
2. **Activities outside of the home.** Mindful that we must continue to limit social interactions to protect public health, individuals may leave their homes for activities, subject to the requirements and guidelines set forth below. These requirements may be clarified, as deemed necessary by the Mayor, to ensure the health, safety, and security of all residents. Clarifications will be available for public review at the City website at [www.fargond.gov](http://www.fargond.gov).
- a. **Guidelines.** Individuals engaging in activities outside of the home must follow the requirements of this Emergency Order and North Dakota Smart Restart and CDC Guidelines.
  - b. **Social gatherings.** All indoor or outdoor social gatherings of more than 50 people are prohibited except as set forth below in this subsection b. Social gatherings are groups of individuals, who are not members of the same household, congregated together for a common or coordinated social, community, or leisure purpose—even if social distancing can be maintained. This prohibition includes planned and spontaneous gatherings as well as public and private gatherings.
    - i. **Legislative and other governmental meetings.** The limits on gatherings in this Emergency Order do not apply to legislative and other governmental meetings. Remote meetings are strongly encouraged whenever possible as permitted by state or local authority.
    - ii. **The Judiciary—the Courts.** The limits on gatherings in this Emergency Order do not apply to proceedings held by the federal, state or local (City of Fargo) judiciary and its courts. Proceedings held by the judiciary are subject to the policies established by the presiding judges of courts and will occur as directed by applicable court rules and court orders. Individuals may appear as directed by any said court, including to serve as a juror, appear as a party, as a witness as legal counsel on behalf of a party, or otherwise to comply as directed by a court order, subpoena, or summons.
    - iii. **Federal activities.** Nothing in this Emergency Order will be construed to limit, prohibit, or restrict in any way the operations of the federal government or the movement of federal officials in the city of Fargo while acting in their official capacity, including federal judicial, legislative, and executive staff and personnel.
    - iv. **Events Sanctioned by School Affiliations or Associations.** The limits on gatherings in this Emergency Order do not apply to events sponsored by established and existing affiliations or associations of schools that sponsor performances or competition, such as the North Dakota High School Activities Association, so long as occupancy of the location of such indoor event space does not exceed **25 percent** of the occupant load and so long as said sponsoring affiliation or association establishes appropriate COVID-related

safe practices and measures to be followed by participants, spectators and workers at such events.

- v. **Weddings, funerals, and services.** Places of worship, funeral homes, and other venues that offer gathering space for weddings, funerals, or planned services such as worship, rituals, prayer meetings, or scripture studies, may host such weddings, funerals, or services exceeding the limits set forth above, provided that they adhere to the following requirements:

- A. In all settings, ensure a minimum of 6 feet of physical distancing between households.
- B. In indoor settings, occupancy must not exceed **25 percent** of the occupant load, with a maximum of **50 people** in a single self-contained space.

- 3. **Workers and businesses.** Workers and businesses are subject to the requirements set forth below. These requirements may be clarified, as deemed necessary by the Mayor, to ensure the health, safety, and security of all.

- a. **Places of Public Accommodation.** Places of Public Accommodation are subject to the following requirements and limitations:

- i. All Places of Public Accommodation remaining open or opening under this Emergency Order must adhere to the requirements set forth in this subparagraph 3.a.
- ii. For the purposes of this Emergency Order, the following establishments and facilities are not Places of Public Accommodation:
  - A. Establishments and facilities that offer food and beverage not for on-premises consumption, including grocery stores, markets, convenience stores, pharmacies, drug stores, and food pantries, other than those portions of the Place of Public Accommodation otherwise subject to the requirements of this subparagraph 3.a.
  - B. Health care facilities, child care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities.
  - C. Crisis shelters, soup kitchens, or similar institutions.
  - D. Restaurants and food courts inside the secured zones of airports.
- iii. Places of Public Accommodation, which would otherwise be subject to the restrictions in this Emergency Order, may be exempted from such restrictions if they have been re-purposed to exclusively provide services permitted under subparagraph 3.a.ii.
- iv. Places of Public Accommodation subject to this Emergency Order are encouraged to offer food and beverage using delivery service, window service, walk-up service, drive-through service, or drive-up service, and to use precautions in doing so to mitigate the potential transmission of COVID-19, including social distancing, recognizing that delivery, drive-through, curbside service of sealed alcoholic beverages, when served with food orders, is

permitted for on-sale licensees for alcoholic beverages pursuant to a City of Fargo Moratorium initially approved by the board of city commissioners of the City of Fargo on the 23rd day of March, 2020, and most recently extended by said commissioners so that it terminates at the same time as the City's COVID-related State of Emergency, by resolution approved the 19<sup>th</sup> day of October, 2021.

- v. Restaurants, food courts, cafes, coffeehouses, bars, taverns, brewer taprooms, micro distiller cocktail rooms, farm wineries, craft wineries, cideries, golf courses and clubs, dining clubs tobacco product shops, and other Places of Public Accommodation offering food, beverages (including alcoholic beverages), or tobacco products for on-premises consumption, may provide indoor and outdoor service, provided that they adhere to the following requirements:
  - A. Occupancy of any indoor space must not exceed **25 percent** of the occupant load, with a maximum of **50 people** in a single self-contained space.
  - B. Occupancy of any outdoor space must ensure that the number of customers at any one time is limited to the number for whom physical distancing of 6 feet can be maintained between tables, not to exceed **50 people**.
  - C. Workers and customers are admonished to follow face-covering requirements as set forth in the mask directive approved by the Fargo City Commission on August 10, 2020, and the Mayor's mask mandate issued on the 19th day of October, 2020, although there is no penalty for non-compliance with respect to either the said mask directive or mask mandate.
  - D. All establishments must follow applicable state and local laws and regulations.
- b. Reserved.
- c. Reserved.

4. **Occupancy of any Indoor Space—Occupant Load.** References in this Emergency Order to “occupant load”, that may be limited by percentage or otherwise herein, shall mean:

- a. If the building or structure includes one or more rooms or spaces for public assembly as described in the I.F.C., specifically I.F.C. §105.6.37, then “occupant load” shall refer to the permitted number of occupants established in the occupancy permit for each such room or space as determined by the Fire Code Official (said occupancy permit number being the number required to be posted at entrances to public assembly spaces or rooms); and,
- b. For all other buildings or structures, “occupant load” shall mean the permitted number of occupants as indicated on the Certificate of Occupancy provided by the Building and Fire Officials for said building or structure; provided further,

that said occupant loads are established in accordance with the provisions of the International Fire Code (the “IFC”) incorporated by reference in Article 9-07 of the Fargo Municipal Code


and by the provisions of the International Building Code (the "IBC") and the International Existing Building Code (the "IEBC") incorporated by reference in Chapter 21 of the Fargo Municipal Code.

5. **Respect for workers.** All persons within the City must respect the efforts of employers and businesses to protect the safety of their workers and customers by complying with those businesses' social distancing and hygiene instructions. Employers and businesses must post social distancing and hygiene instructions at entrances and in locations that can be easily seen by customers and visitors.
6. **Severability.** A determination that any provision of this Emergency Order is invalid will not affect the enforceability of any other provision of this Emergency Order. Rather, the invalid provision will be modified to the extent necessary so that it is enforceable.
7. **Enforcement and Penalty.** I urge all residents to voluntarily comply with this Emergency Order; however, pursuant to Fargo Municipal Code §10-0318 any person who willfully violates this Emergency Order is guilty of an infraction and upon conviction may be punished by a fine not to exceed \$1,000.

Alcoholic Beverage Licensees. This Emergency Order is a lawful order of the City of Fargo, that is appropriate and necessary to protect the health, safety, morals and general welfare of the people of the city of Fargo and, therefore, licenses for the sale and dispensing of alcoholic beverages issued under the provisions of Article 25-15 of the Fargo Municipal Code may be suspended or revoked by the city commission, subject to the right of any such licensee to a public hearing as provided by city ordinance. F.M.C. §25-1512(C) and (D). Therefore, a person, or firm that is holds an alcoholic beverage license may be subject to both the criminal (infraction) violation and a period of suspension or termination of such license.

8. **Effective Date and Term.** This Emergency Order shall take effect as of 8:00 a.m. Monday, November 16, 2020, and shall continue through the hour of 2:01 a.m. on Tuesday, December 15, 2020, unless it is sooner modified or terminated by the mayor or unless it is modified or terminated sooner by motion or resolution approved by the Fargo board of city commissioners.

**This ORDER,** is hereby issued this 13<sup>th</sup> day of November, 2020.

  
Timothy J. Mahoney, M.D.  
Mayor, City of Fargo

Attest:

  
Jill Pagel, Deputy City Auditor